

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

Tony Fountain #152157  
Plaintiff,

2007 APR 30 A 9:37

Civil Action No. 2:06-CV-548-  
-MHT

VS.

DR. PEASANT, et al  
Defendant.

MOTION TO VOID ORDER OF AUGUST 2<sup>nd</sup> 2006  
FOR CLARIFY ENFORCEMENT OF THE ORDER OF  
AUGUST 2 2006, AND FOR REIMBURSEMENT  
OF PLAINTIFF'S FILING FEE OF AUGUST  
9<sup>th</sup> 2006.

Comes now, Tony Fountain, by and through himself herein request this Court to void its ORDER OF Magistrate Judge Susan Russ Walker, of August 2 2006, requiring the plaintiff to pay \$350.00 filing fee. And show in support the following:

FACTS

On June 20, 2006, plaintiff filed the above action in this Court concerning the Inadequate Medical Attention he received. On August 2<sup>nd</sup> 2006, the Magistrate Judge (Susan Russ Walker) granted the

Plaintiff in forma pauperis status and ordered him to pay said filing fee on or before August 10 2006 (see, Court Doc. #17-1, pages 1-3).

## DISCUSSION

The Magistrate Judge order, Dated August 2 2006, Granting Plaintiff In Forma Pauperis Status IS VOID.

The Magistrate Judge (Susan Russ Walker) had no Authority to Issue a dispositive order GRANTING OR DENYING in Forma Pauperis Status. See Tripodi v. Rison, 847 F.2d. 548 (CA 9, 1988); Prows v. Kastner 842 F.2d. 138 (5th Cir. 1988). Pursuant to 28 U.S.C. Section 636(b)(2), plaintiff section 1983 Complaint was Referred to Magistrate Judge Susan Russ Walker by District Court Judge Myron H. Thompson for a Report and Recommendation. Plaintiff contends the District Court Judge Referral did not authorize the Magistrate Judge to Grant or Deny plaintiff in Forma Pauperis Status, ordering plaintiff to pay \$350.00 is void. Plaintiff contends he never gave his consent to the Magistrate Judge to determine such matter.

Wherefore, plaintiff Request this Court to Clarify the enforcement of the August 2 2006 order in simple and plain terms so the enforcement of said order will comply with the intent of Congress, Federal Laws and this Court.

Discussion Concerning  
Reimbursement

plaintiff, contends the Magistrate Judge Susan Russ Walker, did not have Authority to Grant or Deny his Request to proceed in Form of Pauper's Status, therefore he should be Reimbursed of \$ 350.00 dollars paid on August 9 2006.

I declare (or certify, verify, or state) under penalty of perjury.

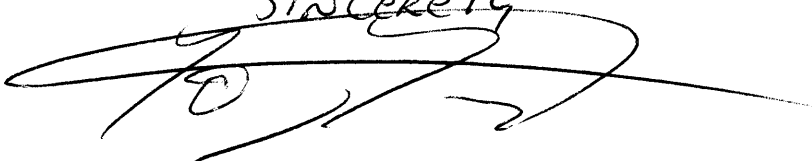
Done this 26<sup>th</sup> day of April 2007.

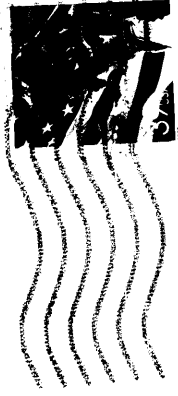
  
Tony Fountain, PRO SE

CERTIFICATE OF SERVICES

I, certify, that I have served a true and correct copy of the foregoing upon the following as Addressed: "Office of The Attorney General, 11<sup>th</sup> S. Union St. Montg. AL. 36130, Portefield, Harper, Mills & Motlow PC. 22 Inverness Center Parkway Suite 600, P.O. Box 530790, Birmingham, AL. 35253-0790, by placing the same in the U.S. Mail pre paid on this 26<sup>th</sup> day of April 2007.

Sincerely





MONTGOMERY AL 361

27 APR 2007 PM 4 T

Tony Fountain #152157  
Station Correctional Facility

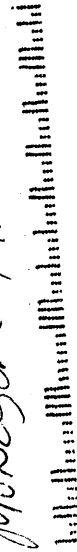
P.O. Box 56, B1-93A

Elmore, AL. 36025

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